

Residential Tenancies Tribunal

Application 2022-1095-NL

Decision 22-1095-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:59 p.m. on 17-January-2023.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants" did not attend.
4. The landlord called a witness, [REDACTED], property manager for the rental, hereinafter referred to as "the witness."

Preliminary Matters

5. The tenants were not present or represented at the hearing and I was unable to reach them by telephone ([REDACTED]) at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted an affidavit with his application stating that he had served the tenants with notice of the hearing, on 17-December-2022 electronically through Facebook messenger, 21-December-2022 by prepaid registered mail ([REDACTED] [REDACTED]), this was returned to sender, as well as, on 04-January-2023 by email. As the tenants were properly served through each of these notifications, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
6. The landlord amended his claim, he reduced the amount he was seeking for possessions returned from \$6,205.13 to \$5,305.15. He said that a neighbor returned a Dewalt 20 volt drill set with rechargeable batteries and a Stihl Ms-235 Chainsaw with the chains. The landlord explained that the neighbor told him he purchased these items from the tenants and when he realized that they were the property of the landlord, he brought them back.

Issues before the Tribunal

7. The landlord is seeking:
 - Possessions returned \$5,305.15
 - Compensation for damages \$2,673.58
 - Late fees \$75.00
 - Security deposit applied against monies owed \$300.00
 - Hearing expenses \$36.88

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 15: Fee for failure to pay rent, as well as Residential Tenancies Policy 9.

Issue 1: Possession returned \$5,305.15

Landlord's Position

10. The landlord said he has a written monthly agreement with the tenants, as follows: The tenants rent an apartment in a three apartment house, they pay \$900.00 (utilities included) and the rental period is from the 15th of each month until the 14th of the next. Rent is due in full on the 15th of each month. They took occupancy on or about the 13-October-2022 and subsequently moved out 23-December-2022. They paid a security deposit of \$300.00 on 17-November-2022, the landlord submitted proof of this payment (LL#02).
11. The landlord said that the tenants did not pay their rent after they moved in. He explained that they were on income support and that they gave their case worker notice that they would be moving. He was told by their case worker, because he didn't have a case number, that the rent would not be paid to him. He said because he was told by income support that they wouldn't be paying for the rent owed; he didn't apply for rent in his application.
12. The landlord testified that when the tenants moved in they were without housing and he was trying to help them out. The apartment he rented to the tenants wasn't fully ready; the tenants were therefore given access to the upstairs unit which was occupied by another tenant. The access was given so that they could use the fridge in the kitchen and the laundry room.
13. The landlord stated, that the upstairs tenant said, that the tenants approached him and inquired about selling some of the things upstairs, for example the electronics. He told the landlord that he said to the tenants that the stuff belonged to the landlord and it wasn't theirs to sell. The landlord indicated that after this a lot of his belongings started to go missing.

14. The landlord provided a list of the missing items (LL#03). These items were primarily in three separate locations: The porch/laundry room, a locked bedroom the landlord uses for storage and a shed. The tenants had access to the porch/laundry main areas of the house as explained by the landlord in paragraph 12. The landlord said that the lock was broken off the trailer/shed and that even though he didn't witness the tenants breaking into the shed it is his belief, that they broke the lock. He also said that there was a lock on one of the bedrooms where he kept some of his personal belongings, the upstairs tenant noticed that this door had the lock broken and he told the landlord. The following is a breakdown of the list is according to area:

Shed

Description	cost
Welder 240 Volt powerfist Mig welder	599.99
Mastercraft vibrating tool	79.99
Welding wire 2lb 0.35 mm 2 pk	69.99
Welding wire 10 lb 0.35 mm	89.99
Gas can 20 ltr	49.99
Welding gloves 5 years old	49.99
Welding wrist protectors 5 years old	39.99
Welding helmet	169.99

Laundry room / back porch /kitchen

Description	cost
Drill bit extension kit	49.99
Vibrating tool bit set 200 piece	59.99
Drill bit set mastercraft	79.99
Microwave danby	169.99
Bluetooth headphones	29.99
Cutlery	100.00
Solomon fall jacket 3 mths old	399.99
Real tree winter parka camo	179.99

Bedroom / landlord's storage

Description	cost
Reebok pumps 1 year old	179.99
Under armour rain jacket scent free camo 1 year old	199.99
Under armour scent free camo pants insulated waterproof 1 year old	169.99
Solomon hiking shoes water proof 1 year old	179.99
2 pairs underwear	unknown
5 pairs socks	Unknown
Reebok shirt orange 1 1/2 years	29.99
Reebok shirt green 1 1/2 years	49.99
American Eagle jeans 1 year	89.99
American Eagle shirt 1 year	79.99
American Eagle sweater 1 year	59.99
Hunting knives	49.99
Hunting knives	69.99

Hunting knives	29.99
Camo gloves hunting	39.99
Plaid jacket fur lined 6 mths old	59.99
Carhart shirt 6 mths	69.99
Carhart pants 6 mths	89.99
Base layer Dakota insulated shirt 6 mths	39.99
Base layer Dakota insulated pants 6 mths	39.99
HH Jacket 6 mths	129.99
Under Armour George St. Pierre base layer 1year	89.99
Oakley winter tuque	29.99
Impact Mastercraft gloves new 3 pairs	59.97
Under Armour jogging pants 3 years	59.99
Under Armour splash pants 3 years	49.99
Grey cotton sweats 1 1/2 years	69.99
Light grey cotton sweats 1 1/2 years	69.99

15. The landlord explained that this might not be a comprehensive list, that there are probably other things missing and that he has spoken with the police. He said that he is his whole life acquiring these items and now they are all gone. He did not provide proof of ownership and he found the amounts for the cost breakdown by searching the prices from Princess Auto, Walmart, Canadian Tire, Home Hardware, etc. He did not provide a copy of the estimated or advertised prices.
16. The landlord presented his property manager for a witness, the witness said that the other downstairs renters told her that the tenants offered to sell them a google home (which was missing) for a package of cigarettes. The downstairs renter also told her that he saw the tenant put several bags into the car of the neighbor who returned the items listed in paragraph 6. She did not know what was in the bags.

Analysis

17. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.
18. The landlord would therefore be required to show that the missing items not only exist and are his property, he should also be able to show that the tenants are responsible for the items disappearance, as well as, an actual cost or estimate to show their value.
19. The landlord has failed to provide proof for his account of the events. He has not provided this tribunal proof that the tenants are responsible for the loss of items. He did not have a witness attend to support his claim that the tenants took any of the belongings, he did have an upstairs tenant who he reported to have some first-hand knowledge, as well as, a neighbor who return missing items, and neither of these people attended the hearing or provided supporting evidence. The landlord's hearsay testimony does not carry enough weight in this consideration to support the landlord's claim.
20. Further to this, the landlord provides no proof of ownership of any of the missing items or proof of their actual value.

21. This claim lacks evidential proof and therefore I find the landlord's claim for missing items fails.

Decision

22. The landlord's claim for possessions returned fails.

Issue 2: Compensation for damages \$2,673.58

Landlord's Position

23. The landlord said that the apartment is non-smoking and that the tenants put cigarette butts down the bathtub drain. He suspects that this will cause issues with the plumbing and submitted a cost breakdown for the supplies required to repair the drain (LL#04) as follows:

Items	#	price	total
30 feet abs piping 3 12 foot	3	31.99	95.97
Abs trap	2	16.49	32.98
90 degree fittings	2	3.29	6.58
45 degree fittings	1	2.19	2.19
1 ½ inch to 4 inch sewer fitting	1	41.29	41.29
Abs joiners	3	2.39	7.17
Tub kit	1	259.99	259.99
Silicone	4	10.49	41.96
Abs glue	2	7.49	14.98
Flooring Cohen's	1	700.00	700.00
Door knobs	2	25.99	51.98
Door jambs and stops	3	24.99	74.97
Door damage from picking locks	2	119.99	239.98
Colonial wood	2	239.98	479.96
Weather stripping	1	18.79	18.79
Smoking damage – complete cleaning		200.00	200.00
Taxes 15%			310.32
Total			\$2,379.11

24. The landlord states that he has done this type of work before and knows what is required. He said he searched on-line for pricing. He said he has not completed this work at this time.

25. The landlord presented his witness; the witness stated that she did see the cigarette butts in the drain and took a picture; she did not submit the picture into evidence.

Analysis

26. Section 10 of the Residential Tenancies Act, 2018 states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

27. The landlord has not provided evidence to show that the tenants have done any damages to the drain. He has also not fixed the drain and his costs are based on a potential future expense and not on actual costs. I therefore find that his claim fails.

Decision

28. The landlord's claim for compensation for damages fails.

Issue 3: Late fees \$75.00

Landlord's Position

29. The landlord said that the tenants did not pay their rent after they moved in and he was unable to receive payment of rent from income support, as he couldn't provide them with a case number. He did not submit a rent ledger or apply for rent in his application.

Analysis

30. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) \$5.00 for the first day the rent is in arrears, and
- (b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

31. In order to assess a late payment fee, this tribunal would require documentation such as a rent ledger to determine when rent was due, how much was paid and any subsequent payments.
32. As the landlord did not provide evidence of rent owed, I find that the application for late fees fails.

Decision

33. The landlord's claim for late fees fails.

Issue 4: Security deposit applied to monies owed \$300.00

34. There has been no financial award in this decision and therefore the security deposit will not be applied.

Issue 5: Hearing expenses reimbursed \$36.88

35. The landlord submitted the receipts for \$36.88 for the cost of the hearing (LL#06 & LL#07) and pursuant to policy 12.01, as his claim was not successful, he is not entitled to reimbursement of that cost from the tenant.

Summary of Decision

36. The landlord's claims for compensation for possessions, repairs and late fees fail.

January 25, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office